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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

CENTRAL FLORIDA EDUCATIONAL FOUNDATION,
INC.

Union Park, Florida

et al., including the
application of

HISPANIC BROADCAST SYSTEM, INC.

Lake Mary, FL

For Construction Permit, New

Noncommercial, Educational FM Stations

) MM Docket No. 92-33

) File No. BPED-881207MA

) File No. BPED-891128ME

To: Administrative Law Judge Edward J. Kuhlmann

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the provisions of Section 1.263 of the Rules and Regulations of the Federal Communications Commission and the Presiding Judge's order specifying the date of filing, Hispanic Broadcast System, Inc. ("Hispanic"), herewith submits its "Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding. In support whereof, the following is stated:

Appearances

Joseph E. Dunne, III on behalf of Central Florida Educational Foundation, Inc.; Gary S. Smithwick, Esq. on behalf of Bible Broadcasting Network, Inc.; A. Wray Fitch, III, Esq. on behalf of Southwest Florida Community Radio, Inc.; Stephen C. Simpson, Esq. on behalf of Mims Community Radio, Inc.; James L. Oyster, Esq. on behalf of Hispanic Broadcast System, Inc.; and James Shook, Esq. on behalf of the Chief, Mass Media Bureau.

FINDINGS OF FACT

I. Preliminary Statement

1. This proceeding is a comparative broadcast hearing conducted pursuant to the Hearing Designation Order (DA 92-224), released March 10, 1992, adopted in accordance with Section 309 (e) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309 (e) (1964). The following issues specified in the Hearing Designation Order remain to be resolved:

2. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a

share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

2. The hearing was held on July 21, 1992 in Washington, D.C.

II. Issue 2 - 307(b)

Areas and Populations

3. The applicants will provide one other service to the number of people listed as follows (Jt. Ex. 1) in numerical order (highest population listed first):

Central Florida Educational Foundation, Inc.	184,775
Hispanic Broadcast System, Inc.	138,791
Broadcasting Network, Inc.	126,141
Southwest Florida Community Radio, Inc.	126,141
Mims Community Radio, Inc.	23,241

4. The applicants will provide two other services to the number of people listed as follows (Jt. Ex. 1):

Central Florida Educational Foundation, Inc.	184,565
Hispanic Broadcast System, Inc.	184,552
Bible Broadcasting Network, Inc.	184,291

Southwest Florida Community Radio, Inc.	184,291
Mims Community Radio, Inc.	129,390

5. The applicants will provide three other services to the number of people listed as follows (Jt. Ex. 1):

Hispanic Broadcast System, Inc.	216,196
Bible Broadcasting Network, Inc.	215,429
Southwest Florida Community Radio, Inc.	215,429
Central Florida Educational Foundation, Inc.	212,472
Mims Community Radio, Inc.	31,670

Share-Time

Hispanic

6. Hispanic believes that a share-time arrangement would result in the most effective use of the channel and requests that the Presiding Judge impose such an arrangement. (Hispanic Ex. 6). Hispanic would be the first Hispanic FM station in the market, and the only Hispanic noncommercial educational station. It believes that the service it is proposing is of such importance to the Hispanic community that it is willing to share time with other applicants as the Judge may deem appropriate to assure that the Hispanic community obtains at least some participation in educational radio in the Orlando market. (Hispanic Ex. 6).

III. Issue 3 - Comparative Issue

Description of the Applicants

Hispanic

7. Hispanic Broadcast System, Inc. is a non-profit corporation organized under the laws of Puerto Rico on November 17, 1989. (Hispanic Ex. 1). The corporation is authorized to con-

struct, own or operate one or more noncommercial educational broadcast stations to be operated on a noncommercial educational basis consistent with the definition of "public telecommunications services" set out in section 397(14) of the Communications Act of 1934, as amended. (Hispanic Ex. 1).

8. The officers and members of the Board of Directors of Hispanic Broadcast System, Inc. are:

Idalia Arzuaga, President
Calle 2 C-8
Urbanizacion El Retiro
Quebradillas, PR 00742

Jose Arzuaga, Vice-President
Calle 2 C-8
Urbanizacion El Retiro
Quebradillas, PR 00742

Ruben Reyes, Secretary
Urb. Valle Verde
Marginal C-5
Ponce PR 00731

9. All of the members of the corporation are Hispanic.
(Hispanic Ex. 1).

Central Florida

10. Central Florida Educational Foundation, Inc. ("Central Florida") is a nonprofit, nonstock corporation organized under the laws of the state of Florida. Central Florida's corporate purposes are set out in its Articles of Incorporation, and include the operation of "an FM radio station to broadcast educational programs which are Bible-based..." (Central Florida Ex. 1).

11. The officers, directors, and members of Central Florida are: James S. Hoge, president; Thomas H. Moffit, Jr., vice

president-treasurer; and, Richard A. Rosenberg, secretary (Central Florida Ex. 1).

The Applicants' Cultural and Educational Objectives and How the Proposed Operation of the Applicants Will be Integrated into the Overall Cultural and Educational Objectives of the Service Area

Hispanic

12. Hispanic proposes to direct its programming mainly to the minority Hispanic population. (Hispanic Ex. 2). This would be the first and only Spanish Educational Station in the Orlando market. Hispanic intends to serve the cultural and educational needs of the Hispanic community within its proposed service area with a Spanish-oriented, primarily secular educational facility. The program material will be designed to improve ability to comprehend and communicate in English. This would include a need for increasing English language comprehension and usage within these groups. The applicant will also present cultural material and religious information. Access to Lake Mary community school would be made available. (Hispanic Ex. 2).

13. All of Hispanic's principals are Spanish-speaking. (Hispanic Ex. 3). They intend to serve the Hispanic population by teaching them the English language and American history and culture so that they may be integrated into the community. The general population will also be served by exposing them to the language, culture and other needs of the Hispanic community. A course in Spanish language will be provided for the English-speaking population which will foster greater harmony between the two cultures. The applicant will seek the cooperation of the local educational institutions to achieve its educational objec-

tives with primary emphasis on educational programs oriented to the Hispanic population. (Hispanic Ex. 3).

14. Demographic data in regard to the Orlando area was submitted (Hispanic Ex. 3). The data demonstrates that 9% of the Orlando Metro area population is Hispanic (Hispanic Ex. 3, p. 3). The total Hispanic population in the Orlando MSA is 96,418 (Hispanic Ex. 3, p. 4). From 1980 to 1990 the Hispanic population has increased by 271.2% (Hispanic Ex. 3, p. 5). There are 3,963 Hispanic students in Seminole County (Hispanic Ex. 3, p. 6) where Lake Mary is located. Approximately 11.8% of students in Orange County are Hispanic (Hispanic Ex. 3, p. 7). The Hispanic Cultural Foundation estimates an Hispanic population of 200,000 in the Central Florida area with no support from area PBS stations (Hispanic Ex. 3, p. 7). There is only one Spanish language program on the FM dial in the Orlando area, airing on Sundays from 7-10 p.m. (Hispanic Ex. 3, p. 9).

Central Florida

15. Central Florida has agreements with a number of educational institutions in the area to broadcast instructional programming produced by the institution in cooperation with Central Florida as part of the institution's regular instructional program. These schools include the following: Circle Community School, Reformed Theological Seminary, Seminole County Schools, and Stetson University (Central Florida Ex. 2, pp. 1-2).

16. Central Florida will work with the instructional staffs of four different educational institutions, CCS, RTS, Seminole County and Stetson, to provide an internship training program at

the station in radio station operation and program production for student credit (Central Florida Ex. 2, p. 3).

17. Central Florida will provide a local transmission service to Union Park (Central Florida Ex. 2, p. 4).

18. Central Florida proposes to provide Hispanic/Spanish Programming and Spanish-language Informational Programming to the Service Area, especially at night (Central Florida Ex. 2, p. 4).

19. Central Florida will provide information on home schooling to parents within the service area (Central Florida Ex. 2, p. 7).

20. Central Florida will provide an outlet for Christian Educational and Instructional Programming (Central Florida Ex. 2, p. 8).

21. Central Florida will provide support for families and family life through the broadcast of programming responsive to the personal and emotional needs of families (Central Florida Ex. 2, p. 9).

22. Central Florida will provide programming responsive to the expressed needs of the community (Central Florida Ex. 2, p. 10).

How the Proposed Station Operations
Will Meet the Needs of the Community

Hispanic

23. Hispanic will provide a first educational FM service to the Hispanic Community of its service area. (Hispanic Ex. 4). The importance of service to minority groups was demonstrated in the aftermath of the Rodney King verdict where the frustrations of the minority population led to disastrous events. The radio

station can be used to keep a pulse of the community's problems and needs and serve as a point of communication to the Hispanic community. (Hispanic Ex. 4, p. 1).

24. Hispanic has undertaken a survey of problems and needs in the community. (Hispanic Ex. 4, p. 1). Using a random sampling from the Orlando metro telephone directory, the interviews were conducted by phone. A tabulation of the results of those interviews is set forth in Hispanic Ex. 4. The greatest problem in the community was "drugs." (Hispanic Ex. 4, p. 1). By far, the greatest programming need expressed was for "English" instruction. (Hispanic Ex. 4, p. 2).

Central Florida

25. Central Florida's principals have a number of means and methods of determining the needs of Union Park. They have reviewed the efforts of the "Community Ascertainment Project" sponsored by the Orlando Radio Broadcasters Association (Central Florida Ex. 3, p. 1).

26. Central Florida's principals are exposed to the areas needs through programming broadcast over WTLN (Central Florida Ex. 3, p. 2). WTLN sponsors remote broadcasts which expose them to the area needs. (Central Florida Ex. 3, p. 2).

27. Mr. Hoge and Mr. Moffit conduct community leader survey interviews and discussions concerning local needs at local churches. These discussions and surveys are then discussed by the parties. (Central Florida Ex. 3, p. 3).

The Applicants' Ability to Effectuate Their Plans Hispanic

28. Two of Hispanic's principals are experienced broadcasters and can bring this experience to bear in effectuating its proposal. (Hispanic Ex. 5). One of its principals is an experienced educator. (Hispanic Ex. 5).

29. Idalia Arzuaga has been involved in broadcasting since 1974 as Manager, Commercial Manager Sales, Announcer, Traffic Manager, Secretary, and Bookkeeping of WREI-FM, Quebradillas, PR. (Hispanic Ex. 5, p. 2).

30. Jose Arzuaga has likewise been involved with WREI since 1974, serving as General Manager, Chief Engineer, Controlman, Announcer, Recording Engineer, Director of Production, Salesman, and Program Director. (Hispanic Ex. 5, p. 4). His career began in 1958-63 as an announcer with WAPA, San Juan, PR (Hispanic Ex. 5, p. 3). He was an announcer at WFID, Rio Piedras, PR from 1963 to 1964. From 1964 - 74, he served as Chief Engineer, Controlman, Announcer, Recording Engineer, Director of Production, and Assistant General Manager of WVOZ (AM), Carolina, PR (Hispanic Ex. 5, p. 3). From 1968 - 74, he served as Chief Engineer, Controlman, Announcer, Recording Engineer, Director of Production, and Assistant General Manager of WOLA-FM, Rio Piedras, PR (Hispanic Ex. 5, p. 3). In 1985, he was Chief Engineer, Controlman, Announcer, Recording Engineer, Director of Production, General Manager, Salesman and Program Director of WJYT (AM), Quebradillas, PR (Hispanic Ex. 5, p. 3).

31. Ruben Reyes Rodriguez is experienced in education, holding Masters Degrees from New York University in teaching (Hispanic Ex. 5, p. 5). From 1960 to 1970, he was adult coordi-

nator, Market Education Program, Ponce, Puerto Rico Educational Region (Hispanic Ex. 5, p. 6). From 1970 to present, he has held the position of General Supervisor, Marketing Education Program, Ponce, Puerto Rico Educational Region (Hispanic Ex. 5, p. 6). From 1983 to 1985, he simultaneously supervised the Ponce and Mayaguez regions. From 1983 to present, he has been simultaneously General Supervisor and Adult Coordinator on a regional level (Hispanic Ex. 5, p. 6).

Central Florida

32. Two of Central Florida's principals will work full-time at the proposed station (Central Florida Ex. 4, p. 1). Two of the principals were directors of DeLand Christian Academy and have experience in attempting to run a school in Central Florida (Central Florida Ex. 4, p. 1).

33. Mr. Hoge is a director of the Circle Community School, which will be cooperating with the station to produce certain educational programming for its students. (Central Florida Ex. 4, p. 1-2). Central Florida's principals have conducted radio internship programs, utilizing student interns from DeLand Christian Academy (Central Florida Ex. 2, p. 2). Central Florida principals have supervised high school students who have worked at WTLN for credit (Central Florida Ex. 2, p. 2).

34. Central Florida's principals have experience producing radio programming. Mr. Hoge is functionally bi-lingual and assists in the production of Spanish-language radio programming, "Rayo da Esperanza," by the Primera Iglesia Bautista, Cali, Columbia, and the Spanish-language programming produced by the

Southern Baptist Seminary in Cali, Columbia (Central Florida Ex. 4, p. 3).

35. Thomas H. Moffit, Jr. has been the General Manager of WTLN (AM & FM) since 1968, and has been a principal of the licensee, Alton Rainbow Corporation since the mid-70's (Central Florida Ex. 5, p. 1). Mr. Moffit has been involved in radio since he was 12 years old (Central Florida Ex. 8, p. 1).

36. James S. Hoge has been Director of Engineering for WTLN, Apopka, WRJZ, WYLV, Knoxville, TN and WCVH and WEEE, Chester, PA - Cherry Hill, NJ since May 1989 (Central Florida Ex. 5, p. 1). Mr. Hoge has worked in radio for over 19 years (Central Florida Ex. 7, p. 1).

CONCLUSIONS OF LAW

307(b) Issue

37. Section 307(b) of the Communications Act of 1934, as amended, (the Act) requires the "fair, efficient and equitable distribution" of broadcast service. Therefore, an assessment of the evidence must be made under the applicable Commission standard in determining which applicants meet the statutory standard.

Areas and Populations

38. Central Florida Educational Foundation, Inc. will provide a second service to 184,775; Hispanic Broadcast System, Inc. will serve 138,791; Bible Broadcasting Network, Inc. and Southwest Florida Community Radio, Inc. will serve 126,141; and Mims Community Radio, Inc. will serve 31,670. The coverage proposed by the parties, except Mims Community Radio, Inc. (which is drastically inferior) is virtually identical in all other

respects. Central Florida is entitled to a preference for its superior second service coverage. However, this preference must be weighed against other factors bearing on the 307(b) determination in this case.

Other Factors

39. Hispanic will provide a first FM service to a Hispanic population in excess of 64,000 (para. 6, 12-14, 23 *supra*; Central Florida Ex. 10, p. 2). Central Florida also proposes to serve the Hispanic community, recognizing the growing importance thereof (para. 18, *supra*, Central Florida Ex. 10, p. 2). However, Central Florida's focus is on Biblical programming and not on Hispanic programming. Only a portion of Central Florida's programming will be in Spanish. Hispanic's proposed service to the Hispanic community is not peripheral to other concerns. It is the center of its focus.

40. Central Florida's Articles of Incorporation limit it to the operation of "an FM radio station to broadcast educational programs which are Bible-based..." (Central Florida Ex. 1). While this is a commendable objective, it is limited in scope. Section 73.502 of the Rules and Regulations of the Federal Communications Commission states that "the Commission will take into consideration the extent to which each application meets the requirements of any statewide plan for noncommercial educational FM broadcast stations filed with the Commission, provided that such plans afford fair treatment to public and private educational institutions, urban and rural, at the primary, secondary, higher, and adult educational levels, and appear otherwise fair

and equitable."

41. Standing alone, Central Florida's proposal does not meet the objectives of Section 73.502 of the Rules because of the limitation of its programming to "Bible-based" programming. While such a proposal would foster "private" educational objectives, it stands opposed to public educational objectives which are secular in nature. This is not a case involving a private institution with a religious orientation. A religious institution may provide both religious and secular instruction. However, Central Florida is limited by its Articles of Incorporation to Bible-based programming and thus is precluded from offering secular instructional programming.

42. While Hispanic recognizes that Section 73.502 is not directly applicable to the case at bar, it is respectfully submitted that Section 73.502 sets forth the Commission's objectives in assuring that noncommercial stations are licensed in accordance with Section 307(b) of the Act. It is respectfully submitted that Section 307(b) is not served by a program service which would be limited to Bible-based programming because such a proposal would not meet the secular objectives of a state-wide plan of higher education.

43. In light of the above, it is respectfully submitted that Hispanic's proposal to provide a first FM service to over 64,000 Hispanics outweighs Central Florida's second service advantage. Because Central Florida's programming is limited to "Bible-based" programming, it will not serve the general population and thus the second service advantage is illusory. Further-

more, it will not meet the objectives of 307(b) because it will not serve secular objectives as well as private objectives.

Share-Time

44. Hispanic has stated that it favors an imposed share-time arrangement. Hispanic would be the first Hispanic FM station in the market, and the only Hispanic noncommercial educational station. It believes that the service it is proposing is of such importance to the Hispanic community that it is willing to share time with other applicants as the Judge may deem appropriate to assure that the Hispanic community obtains at least some participation in educational radio in the Orlando market. Central Florida submitted no testimony opposing share-time. Central Florida has stated that it proposes to broadcast Spanish-language programming in the evening.

45. Since both Hispanic and Central Florida see the need to broadcast Spanish-language programming in the community, a share-time arrangement would be consistent with the objectives of both applicants. Further, because Hispanic is a secular organization, a share-time arrangement between Hispanic and Central Florida would further the interests of Section 307(b) of the Act since it would meet both private and secular educational objectives.

46. In light of the fact that both applicants propose Spanish-language programming in the evening, it is respectfully requested that the Presiding Judge impose a 50/50 share-time arrangement between these applicants, granting Hispanic the hours 3:00 p.m. to 3:00 a.m. to permit it to serve the Hispanic community during the evening hours.

Comparative Issue

47. It is believed that this proceeding may be resolved on the basis of the 307(b) issue. The applications of Central Florida and Hispanic are superior to the others in comparative coverage and the superiority should be dispositive. As between Central Florida and Hispanic, Hispanic should prevail under the 307(b) issue for the reasons set forth above. Mims has not submitted any evidence under the comparative issue and need not be considered further herein. Bible and Southwest have agreed to dismiss their applications pursuant to a settlement agreement with Central Florida and Hispanic. Therefore, the only applicants to be compared are Central Florida and Hispanic.

48. The comparative standard for noncommercial broadcast facilities was set forth in *New York University*, 10 RR 2d 215 (1967). The comparative issue enunciated therein seeks to determine the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

49. Both Central Florida and Hispanic have set forth their cultural and educational objectives and how they intend to meet those objectives. Both have demonstrated how they propose to meet the needs of the community and their ability to effectuate their plans. Both have demonstrated that they are capable of effectuating their programming proposals.

50. In essence Central Florida's cultural and educational

objective is to serve the Orlando community with Bible-based programming. While Central Florida proposes to air Hispanic programming, its overall programming is limited to Bible-based programming. Central Florida has not demonstrated a need in the community for such programming. Indeed, such programming is already available over station WTLN which Central Florida's principals currently manage.

51. Hispanic's cultural and educational objective is to serve the unserved Hispanic population of the Orlando area. It has demonstrated a need for such a service (which is confirmed by Central Florida) and the lack of existing service to the Hispanic community. Accordingly, the Hispanic proposal should be held to be comparatively superior to the Central Florida proposal.

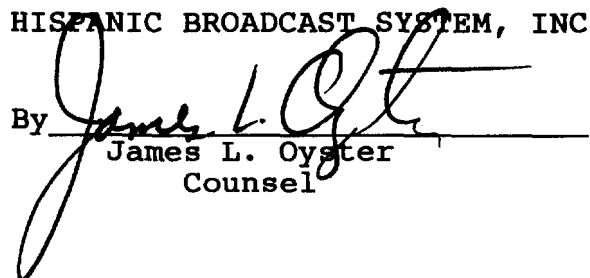
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Presiding Judge grant the application of Hispanic Broadcast System, Inc.

Respectfully submitted,

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HISPANIC BROADCAST SYSTEM, INC.

By


James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 10th day of August, 1992, to the following:

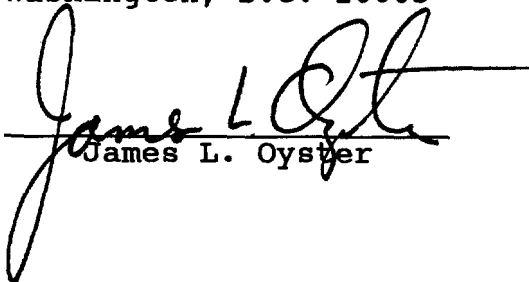
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